

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ARTHUR McELROY,)
)
Plaintiff,) 4:06cv3178
)
vs.) MEMORANDUM AND ORDER
)
)
BANC OF AMERICA INVESTMENT)
SERVICES,)
)
Defendant.)

This matter is before the court on (1) Filing No. 12, the Motion to Dismiss or in the Alternative to Compel Arbitration, filed by the defendant, Banc of America Investment Services; (2) Filing No. 16, the Motion to Deny Defendant's Motion to Dismiss or in the Alternative to Compel Arbitration, filed by the plaintiff, Arthur McElroy; and (3) Filing No. 14, the plaintiff's Motion for Clerk's Entry of Default against Banc of America Investment Services. As a preliminary matter, Filing No. 14 is denied. The defendant obtained an Order (Filing No. 7) granting an extension of time until October 13, 2006, to answer or otherwise respond to the complaint. On October 13, 2006 (Filing No. 12), the defendant filed its Motion to Dismiss or in the Alternative to Compel Arbitration.

As for that Motion, the defendant contends that this court lacks subject matter jurisdiction on grounds of diversity of citizenship under 28 U.S.C. § 1332 because the amount in controversy is less than \$75,000. The plaintiff, on the other hand, calculates the amount in controversy as somewhere between \$75,000 and \$102,000. The defendant also asserts that the plaintiff signed a written agreement to arbitrate, rather than litigate, all disputes of the kind presented in this case. The plaintiff denies signing any such

agreement. Therefore, within thirty (30) days of the date of this Order, the defendant shall file a copy of the agreement with the plaintiff's signature, and the defendant shall specify in an accompanying pleading the section(s) of the agreement relied upon for the relief requested in Filing No. 12.

THEREFORE IT IS ORDERED:

1. That Filing No. 14, the plaintiff's Motion for Clerk's Entry of Default against Banc of America Investment Services, is denied;
2. That within thirty (30) days of the date of this Order, the defendant shall file a copy of the agreement to arbitrate signed by the plaintiff, and the defendant shall specify in an accompanying pleading the section(s) of the agreement relied upon for the relief requested in Filing No. 12; and
3. That Filing No. 12, the defendant's Motion to Dismiss or in the Alternative to Compel Arbitration, and Filing No. 16, the plaintiff's Motion to Deny Defendant's Motion to Dismiss or in the Alternative to Compel Arbitration, are taken under advisement until after thirty (30) days from the date of this Order.

DATED this 25th day of April, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge